

AMENDED IN ASSEMBLY APRIL 18, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2466**

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**Introduced by Assembly Member Blumenfield**

February 24, 2012

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An act to add Section 236.6 to the Penal Code, relating to human trafficking.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2466, as amended, Blumenfield. Human trafficking: seizure of assets.

Existing law makes it a felony, generally known as human trafficking, to deprive or violate the personal liberty of another with the intent to effect or maintain a felony violation of, among other crimes, pimping, pandering, and abducting a minor for the purpose of prostitution. Under existing law, the crime of human trafficking is punishable by a fine not to exceed \$1,000 or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. Existing law requires the court to order a person who is convicted of a crime to pay a restitution fine, as prescribed, and restitution to the victim or victims for the full amount of economic loss, unless the court finds compelling and extraordinary reasons for not doing so and states them on the record. Additionally, under existing law, real property used to facilitate the commission of human trafficking may be determined to be a nuisance and remedies may be imposed against that property.

This bill would authorize the prosecuting agency, at the same time as the filing of a complaint or indictment charging human trafficking,

to file a petition for protective relief necessary to preserve property or assets that could be used to pay for remedies relating to human trafficking, including, but not limited to, restitution and fines. The bill would specify the process by which a preliminary injunction, temporary restraining order, or sale of property or assets may be ordered.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 236.6 is added to the Penal Code, to read:  
2     236.6. (a) To prevent dissipation or secreting of assets or  
3     property, the prosecuting agency may, at the same time as or  
4     subsequent to the filing of a complaint or indictment charging  
5     human trafficking under Section 236.1, file a petition with the  
6     criminal division of the superior court of the county in which the  
7     accusatory pleading was filed, seeking a temporary restraining  
8     order, preliminary injunction, the appointment of a receiver, or  
9     any other protective relief necessary to preserve the property or  
10    assets. The filing of the petition shall start a proceeding that shall  
11    be pendent to the criminal proceeding and maintained solely to  
12    effect the remedies available for this crime, including, but not  
13    limited to, payment of restitution and payment of fines. The  
14    proceeding shall not be subject to or governed by the provisions  
15    of the Civil Discovery Act as set forth in Title 4 (commencing  
16    with Section 2016.010) of Part 4 of the Code of Civil Procedure.  
17    The petition shall allege that the defendant has been charged with  
18    human trafficking under Section 236.1 and shall identify that  
19    criminal proceeding and the assets and property to be affected by  
20    an order issued pursuant to this section.  
21    (b) The prosecuting agency shall, by personal service or  
22    registered mail, provide notice of the petition to every person who  
23    may have an interest in the property specified in the petition.  
24    Additionally, the notice shall be published for at least three  
25    successive weeks in a newspaper of general circulation in the  
26    county where the property affected by the order is located. The  
27    notice shall state that any interested person may file a verified  
28    claim with the superior court stating the nature and amount of his  
29    or her claimed interest. The notice shall set forth the time within  
30    which a claim of interest in the protected property shall be filed.

1 (c) If the property to be preserved is real property, the  
2 prosecuting agency shall record, at the time of filing the petition,  
3 a lis pendens in each county in which the real property is situated  
4 that specifically identifies the property by legal description, the  
5 name of the owner of record, as shown on the latest equalized  
6 assessment roll, and the assessor's parcel number.

7 (d) If the property to be preserved consists of assets under the  
8 control of a banking or financial institution, the prosecuting agency,  
9 at the time of filing the petition, may obtain an order from the court  
10 directing the banking or financial institution to immediately  
11 disclose the account numbers and value of the assets of the accused  
12 held by the banking or financial institution. The prosecuting agency  
13 shall file a supplemental petition, specifically identifying which  
14 banking or financial institution accounts shall be subject to a  
15 temporary restraining order, preliminary injunction, or other  
16 protective remedy.

17 (e) A person claiming an interest in the protected property or  
18 assets may, at any time within 30 days from the date of the first  
19 publication of the notice of the petition, or within 30 days after  
20 receipt of actual notice, whichever is later, file with the superior  
21 court of the county in which the action is pending a verified claim  
22 stating the nature and amount of his or her interest in the property  
23 or assets. A verified copy of the claim shall be served by the  
24 claimant on the Attorney General or district attorney, as  
25 appropriate.

26 (f) The imposition of fines and restitution shall be determined  
27 by the superior court in which the underlying criminal offense is  
28 sentenced. A judge who is assigned to the criminal division of the  
29 superior court in the county where the petition is filed may issue  
30 a temporary restraining order in conjunction with, or subsequent  
31 to, the filing of an allegation pursuant to this section. A subsequent  
32 hearing on the petition shall also be heard by a judge assigned to  
33 the criminal division of the superior court in the county in which  
34 the petition is filed. At the time of the filing of an information or  
35 indictment in the underlying criminal case, a subsequent hearing  
36 on the petition shall be conducted by the superior court judge  
37 assigned to the underlying criminal case.

38 (g) Concurrent with or subsequent to the filing of the petition,  
39 the prosecuting agency may move the superior court for, and the  
40 superior court may issue, ~~either~~ any of the following pendente lite

1 orders to preserve the status quo of the property or assets alleged  
2 in the petition:

3 (1) An injunction to restrain any person from transferring,  
4 encumbering, hypothecating, or otherwise disposing of the property  
5 or assets.

6 (2) Appointment of a receiver to take possession of, care for,  
7 manage, and operate the assets and properties so that they may be  
8 maintained and preserved. The court may order that a receiver  
9 appointed pursuant to this section shall be compensated for all  
10 reasonable expenditures made or incurred by him or her in  
11 connection with the possession, care, management, and operation  
12 of property or assets that are subject to the provisions of this  
13 section.

14 (3) *Requiring a bond or other undertaking, in lieu of other*  
15 *orders, of a value sufficient to ensure the satisfaction of restitution*  
16 *and fines imposed pursuant to Section 236.1.*

17 (h) The following procedures shall be followed in processing  
18 the petition:

19 (1) No preliminary injunction shall be granted or receiver  
20 appointed without notice to the interested parties and a hearing to  
21 determine that the order is necessary to preserve the property or  
22 assets, pending the outcome of the criminal proceedings. However,  
23 a temporary restraining order may be issued pending that hearing  
24 pursuant to the provisions of Section 527 of the Code of Civil  
25 Procedure. The temporary restraining order may be based upon  
26 the sworn declaration of a peace officer with personal knowledge  
27 of the criminal investigation that establishes probable cause to  
28 believe that human trafficking has taken place and that the amount  
29 of restitution and fines established pursuant to subdivision (f)  
30 exceeds or equals the worth of the property or assets subject to the  
31 temporary restraining order. The declaration may include the  
32 hearsay statements of witnesses to establish the necessary facts.  
33 The temporary restraining order may be issued without notice upon  
34 a showing of good cause to the court.

35 (2) The defendant, or a person who has filed a verified claim,  
36 shall have the right to have the court conduct an order to show  
37 cause hearing within 10 days of the service of the request for a  
38 hearing upon the prosecuting agency, in order to determine whether  
39 the temporary restraining order should remain in effect, whether  
40 relief should be granted from a lis pendens recorded pursuant to

1 subdivision (c), or whether an existing order should be modified  
2 in the interests of justice. Upon a showing of good cause, the  
3 hearing shall be held within two days of the service of the request  
4 for a hearing upon the prosecuting agency.

5 (3) In determining whether to issue a preliminary injunction or  
6 temporary restraining order in a proceeding brought by a  
7 prosecuting agency in conjunction with or subsequent to the filing  
8 of an allegation pursuant to this section, the court has the discretion  
9 to consider any matter that it deems reliable and appropriate,  
10 including hearsay statements, in order to reach a just and equitable  
11 decision. The court shall weigh the relative degree of certainty of  
12 the outcome on the merits and the consequences to each of the  
13 parties of granting the interim relief. If the prosecution is likely to  
14 prevail on the merits and the risk of the dissipation of assets  
15 outweighs the potential harm to the defendants and the interested  
16 parties, the court shall grant injunctive relief. The court shall give  
17 significant weight to the following factors:

18 (A) The public interest in preserving the property or assets  
19 pendente lite.

20 (B) The difficulty of preserving the property or assets pendente  
21 lite where the underlying alleged crimes involve human trafficking.

22 (C) The fact that the requested relief is being sought by a public  
23 prosecutor on behalf of alleged victims of human trafficking.

24 (D) The likelihood that substantial public harm has occurred  
25 where the human trafficking is alleged to have been committed.

26 (E) The significant public interest involved in compensating  
27 victims of human trafficking and paying court-imposed restitution  
28 and fines.

29 (4) The court, in making its orders, may consider a defendant's  
30 request for the release of a portion of the property affected by this  
31 section in order to pay reasonable legal fees in connection with  
32 the criminal proceeding, necessary and appropriate living expenses  
33 pending trial and sentencing, and for the purpose of posting bail.  
34 The court shall weigh the needs of the public to retain the property  
35 against the needs of the defendant to a portion of the property. The  
36 court shall consider the factors listed in paragraph (3) prior to  
37 making an order releasing property for these purposes.

38 (5) The court, in making its orders, shall seek to protect the  
39 interests of innocent third persons, including an innocent spouse,  
40 who were not involved in the commission of criminal activity.

1 (6) A petition filed pursuant to this section is part of the criminal  
2 proceedings for purposes of appointment of counsel and shall be  
3 assigned to the criminal division of the superior court of the county  
4 in which the accusatory pleading was filed.

5 (7) Based upon a noticed motion brought by the receiver  
6 appointed pursuant to paragraph (2) of subdivision (g), the court  
7 may order an interlocutory sale of property named in the petition  
8 when the property is liable to perish, to waste, or to be significantly  
9 reduced in value, or when the expenses of maintaining the property  
10 are disproportionate to the value of the property. The proceeds of  
11 the interlocutory sale shall be deposited with the court or as  
12 directed by the court pending determination of the proceeding  
13 pursuant to this section.

14 (8) The court may make any orders that are necessary to preserve  
15 the continuing viability of a lawful business enterprise that is  
16 affected by the issuance of a temporary restraining order or  
17 preliminary injunction issued pursuant to this section.

18 (9) In making its orders, the court shall seek to prevent the  
19 property or asset subject to a temporary restraining order or  
20 preliminary injunction from perishing, spoiling, going to waste,  
21 or otherwise being significantly reduced in value. Where the  
22 potential for diminution in value exists, the court shall appoint a  
23 receiver to dispose of or otherwise protect the value of the property  
24 or asset.

25 (10) A preservation order shall not be issued against an asset  
26 of a business that is not likely to be dissipated and that may be  
27 subject to levy or attachment to meet the purposes of this section.